REMARKS

Claims 1-33 are pending. Of these, claims 1, 13, 24 and 26 are written in independent format.

§ 102 REJECTION – EDLUND '227 PATENT

Beginning on page 2 of the Office Action, claims 1, 2, 8, 10, 13, 14, 18, 20-24, 26 and 28-33 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,085,227 ("the Edlund '227 patent") to Edlund et al. This rejection is traversed.

Claim 24

Applicant will begin the discussion in terms of claim 24 taken as an example. This is done so because the Examiner's rebuttal arguments (beginning on page 7 of the Office Action) are directed toward claim 24.

In the rebuttal arguments, the Examiner challenges Applicant's characterization that the program of the Edlund '227 patent has already been loaded and is running, and asserts that the Edlund '227 patent does not preclude the possibility that the program stored on the server is not already executing. Here, the Examiner's "not preclude the possibility" phraseology is akin to the taking of an inherency position. It is to be recalled that something is inherent only if it necessarily follows from what is literally disclosed, NOT if the mere possibility is not necessarily precluded.

It is agreed that the phrase "previously initialized" is not recited literally in the Edlund '227 patent. The following, however, is literally recited (column 5, lines 12-16) (underlined emphasis added):

> When a command from the user is authorized by the user manager 114 and session manager 118 on the proxy server computer 104, the task manager 120 is then invoked. The task manager 120 may translate the command into one or more device 106 dependent sub-commands.

When "the task manager 120 is then invoked," execution of task manager 120 (a program) begins. After being invoked, the Edlund '227 patent teaches that task manager 120 may translate the command, etc.

Furthermore, FIG. 3 (which illustrates the operation of a proxy server computer 104) includes "Initialization" block 300, which is described in column 6, lines 24-26 as follows (underlined emphasis added):

> Block 300 represents the proxy server computer 104 initializing the command processor 112, user manager 114, session manager 118, and task manager 120.

At subsequent block 302, proxy server computer 104 waits for the next event. More particularly, it determines at block 304 if the next event represents the receipt of a Web Scope command.

Thus, Applicant's inference that the relevant programs on proxy server computer 104 are previously initialized is a reasonable inference based on what is literally disclosed, as explained above, and is consistent with rubric for the law of inherency. In contrast, the Examiner's "not necessarily precluded" rationale is not consistent with the law of inherency, and thus is not reasonable.

Secondly, the Examiner argues that the paraphrasing of claim 24, namely receiving a request to execute said executable file, provides no basis to assert that the program must not be currently running or executing. The Examiner goes on to argue that a "currently executing program can be directed to execute" (underlined emphasis in original). Applicant disagrees.

The Examiner is giving an unreasonable interpretation to the term "executable." As evidence of how the skilled artisan would have interpreted the term, Applicant turns to dictionary definitions. For example, www.whatis.com[1] defines an "executable" as a "file that is capable of being executed or run as a program in the computer." There, "capable of being executed" does not include a state in which the file is already undergoing execution (namely, the Examiner's asserted meaning). As another example, the Free On-Line Dictionary Of Computing[2] ("FOLDOC") defines an "executable" as "a binary file containing a program in machine language which is ready to be executed (run)." Similarly, the FOLDOC language "ready to be executed (run)" does not include a state in which the file is already undergoing execution (namely, again, the Examiner's asserted meaning). For the sake of brevity, Applicant will not

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1 URL = http://searchsmb.techtarget.com/sDefinition/0,290660,sid44_gci212086,00.html.
2 URL = http://foldoc.org/foldoc/foldoc.cgi?executable.

discuss other dictionary definitions of "executable" for which the Examiner's asserted meaning is inconsistent.[3]

Having addressed the Examiner's rebuttal arguments, Applicant reiterates his traversal arguments.

The gist of the Examiner's position appears to be that the following two descriptions are the same:

PARAPHRASED CLAIM 24,[4] TAKEN AS AN EXAMPLE

a server receiving a request via a remote terminal from a web browser running thereon to execute an executable file resident on the server; and

WHAT EDLUND '227 PATENT TEACHES:[5]

receiving a command, at a server via a web browser, for a previously initialized program running on the server.

Applicant finds this unreasonable. More particularly, (1A) an executable file resident on a server is different than (1B) a previously initialized program running on a server. In a context of (2A) a request to execute (the executable) versus a context of (2B) a command for (the program), the skilled artisan would have understood that (1A) and (2A) describing loading and running an executable, while (1B) and (2B) concern passing one from among a set of commands recognizable by a program that already has been loaded and which is already running.

Applicant is willing to assume for the sake of argument that there might be circumstances in which a result of commands sent by the user via browser 108 (as in the Edlund '227 patent) could correspond to a result that would be achieved when (as claimed, e.g., in claim 24) the executable file resident on the server is caused to be executed by the request received at the server via the remote terminal from the web browser. But more than merely a result is claimed.

Rather, steps to achieve such a result also are claimed. And the claimed steps are different than those taught by the Edlund '227 patent, as explained above. Moreover, the claimed steps occur at an earlier state in the use of a piece of software resident on a server than what is taught by the Edlund '227 patent. Aspects (1B) and (2B) can occur only after aspects

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3 See, e.g., URL = http://www.computeruser.com/resources/dictionary/definition.html?lookup=8384 or URL = http://en.wikipedia.org/wiki/Executable.

4 Underlined emphasis added.

5 Underlined emphasis added.

such as (1A) and (2A) have occurred. How can the Examiner treat aspects (1A) & (2A) and aspects (1B) & (2B) as being the if they have a sequential relationship?

Applicant recognizes that an Examiner is charged with giving the broadest reasonable interpretation to the claims.[6] But "[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach."[7] The Examiner has run afoul of the latter.

The Examiner states regarding the Edlund '227 patent:[8] "the server in fact causes a request from the browser to execute a file on the server." Applicant disagrees. As explained previously,[9] the Edlund '227 patent passes commands that are part of set of commands recognizable by an already loaded/running program on the server. This is different than a request to execute, i.e., a request to load and run, an executable resident on the server. How can the Examiner persist with an interpretation that is inconsistent with what the skilled artisan would have reached?

Independent claim 26 recites a feature similar to that of claim 24 and thus at least similarly distinguishes over the Edlund '227 patent. Claims 28 and 28 depend from claims 24 and 26, respectively, and thus at least similarly distinguish over the Edlund '227 patent.

Claim 1

As another example, consider claim 1. A distinction over the Edlund '227 patent of claim 1 is a "first web page being configured to accommodate a set of commands that are to be contained in a script or program."

It will be assumed for the sake of argument that the Edlund '227 patent provides a web page to accommodate the receipt of information. That information is in the form of a single "Web Scope" command. At block 304, proxy server computer 104 determines "whether the event comprises the receipt of a command from the client computer 102" (column 6, lines 32-33) (underlined emphasis added) In other words, while a user can cause a client computer 102 to send what appear to be multiple commands when viewed over an elapsed time, each command is sent discretely, i.e., not as a set of commands (i.e., two or more commands). Moreover, there is

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6 See MPEP § 2111, page 2100-46.
7 See MPEP § 2111, page 2100-47 (underlined emphasis added).
8 See page 21, Final Office Action mailed July 27, 2005.
9 See pages 9-10 of Applicant's response filed April 25, 2005.

no recognition in the Edlund '227 patent that such a discrete command would become included in a script or program.

The claimed step of "the server doing at least one of checking the syntax of said set and executing said set" is a further distinction of claim 1 over the Edlund '227 patent. As the Edlund '227 patent does not disclose accommodating a set of commands (as explained above), therefore the Edlund '227 patent cannot disclose executing such a set. Neither does the Edlund '227 patent mention the term "syntax."

Independent claim 13 recites features similar to that of claim 1 and thus at least similarly distinguishes over the Edlund '227 patent. Claims 2, 8, 10, 14, 18, 20-23 and 30-33 depend at least indirectly from claims 1 and 13, respectively, and thus at least similarly distinguish over the Edlund '227 patent.

Claim 2

In the alternative, a distinction of claim 2 over the Edlund '227 patent is that execution includes either compiling and running the set of commands that are to be contained in a script or program or interpreting the set. The Edlund '227 does not recite any word beginning with the letter sequence "compil" nor any word beginning with the letter sequence "interp". Also in the alternative, claim 14 recites features similar to that of claim 2 and thus at least similarly distinguishes over the Edlund '227 patent.

Summary As to § 102 Rejection

In view of the foregoing discussion, it is improper to assert the Edlund '227 patent as being anticipatory of 1, 2, 8, 10, 13, 14, 18, 20-24, 26 and 28-33. Withdrawal of this rejection is requested.

§ 103 REJECTION

Beginning on page 5 of the Office Action, claims 3, 4, 7, 9, 15, 16, 17, 19, 25 and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Edlund '227 patent in view of the article, "Reading CGI Data: url-encoding and the CGI protocol" by Morton ("the Morton REF"). This rejection is traversed.

Claims 3, 4, 7, 9, 15, 16, 17, 19, 25 and 27 depend at least indirectly from claims 1 and 13, respectively, and thus at least similarly distinguish over the Edlund '227 patent for the reasons given above. The Morton REF has not been cited as a teaching of the respective features of claims 1 and 13 noted above as distinctions over the Edlund '227 patent, nor would it be reasonable to assert that the Morton REF as such.

Thus, this rejection is improper and its withdrawal is requested.

ALLOWABLE SUBJECT MATTER

Applicant is please to acknowledge the Examiner's indication that claims 5, 6, 11 and 12 would be allowable if rewritten in independent form.

CONCLUSION

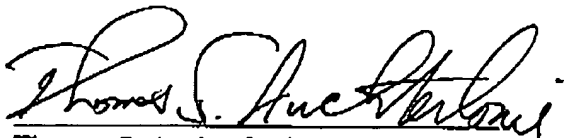
The issues raised in the Office Action are considered to be resolved. Accordingly, Applicant again requests a Notice of Allowance.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 08-0750, including, in particular, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C.

By: 

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